

Service Date: February 7, 1997

DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA

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IN THE MATTER OF Western Wireless	)	UTILITY DIVISION
Corporation's Petition for Arbitration	)	
Pursuant to Section 252(b) of the	)	
Telecommunications Act of 1996 of the	)	
Rates, Terms, and Conditions of	)	DOCKET NO. D96.9.150
Interconnection With U S WEST	)	
Communications, Inc.	)	ORDER NO. 5949c

**FINAL ORDER APPROVING ARBITRATED AGREEMENT**

**Introduction**

Pursuant to the Arbitration Order in this Docket issued on December 27, 1996, Western Wireless Corporation (Western) and U S WEST Communications, Inc. (U S WEST) submitted their Montana Wireless Interconnection Agreement to the Montana Public Service Commission (Commission) for approval as required by 47 U.S.C. § 252(e). Section 252(e)(4) of the Telecommunications Act of 1996 (1996 Act)<sup>1</sup> provides that an arbitrated agreement submitted for a state commission's approval must be approved or rejected within 30 days or it will be deemed approved. Thus, Commission approval or rejection according to the substantive standards set forth in the 1996 Act must issue by February 10, 1997.

Subsequent to the filing of the signed agreement, U S WEST filed a revised Page 2 to the Amendment to Type 2 Interconnection and Traffic Interchange Agreement for Wireless Carriers With Growth Discount Montana (the Amendment) that was attached to the new interconnection agreement and which implements terms from the Arbitration Order.

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<sup>1</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (to be codified as amended in scattered sections of 47 U.S.C.).

**Factual and Procedural Background**

1. On September 6, 1996 Western filed a petition asking the Commission to arbitrate “open issues” related to its ongoing interconnection negotiations with U S WEST. Although Western as a provider of cellular telecommunications is not regulated by the Commission,<sup>2</sup> 47 U.S.C. § 252(b)(1) permits the incumbent local exchange carrier (LEC) or any other party to the negotiation of an interconnection agreement to ask a state commission to arbitrate unresolved issues between the 135th and 160th days (inclusive) following the date the incumbent LEC receives a request for interconnection negotiations. Western requested negotiation with U S WEST on March 29, 1996, and filed its petition for arbitration with the Commission on September 6, 1996, the 160th day after the request.

2. Western, a Commercial Mobile Radio Service (CMRS) provider d/b/a “Cellular One,” offers cellular communications throughout Montana pursuant to its Federal Communications Commission (FCC) radio license. Western requested renegotiation of the parties’ existing interconnection contract, which did not provide for any compensation from U S WEST to Western for calls originating on U S WEST’s network and terminating on Western’s network. The 1996 Act permits renegotiation of such contracts between an incumbent LEC and a CMRS provider. 47 U.S.C. § 251(b)(5).

3. The Commission acted as the arbitrator in this proceeding pursuant to 47 U.S.C. § 252(b) and 69-3-102 and -103, MCA, applying the standards set forth in 47 U.S.C. § 252(c). The only permitted intervenor was the Montana Consumer Counsel.

4. The arbitration hearing was held on December 4, 1996. At that time, the following arbitration issues, identified by the parties in the petition and response, remained unresolved: (1) the rate for interconnection and transport and termination; (2) the applicable rate

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<sup>2</sup>Section 69-3-803(3), MCA, exempts providers of cellular communications and other wireless services from the definition of “regulated telecommunications service.”

for Western's switching facilities; (3) the effective date for implementing the new contract rates; (4) the percentage of U S WEST traffic that terminates on Western's network; and (5) the definition of "local" traffic and applicable rate for non-local traffic. The first issue included the additional question whether U S WEST could add its claimed depreciation reserve deficiency to prices Western had previously accepted.

5. The Commission resolved the issues presented by the parties and issued its Arbitration Order on December 27, 1996, within the nine months mandated by 47 U.S.C. § 252(b)(4)(C). The Commission ordered: (1) that the rates for interconnection and transport and termination of traffic shall be the rates proposed by U S WEST in its response and accepted by Western; (2) that U S WEST may not at this time recover its alleged depreciation reserve deficiency in transport and termination charges; (3) that Western's Mobile Telephone Switching Offices (MTSOs) are to be treated as end-offices for purposes of establishing the appropriate transport and termination prices for traffic originating on U S WEST's network and terminating on Western's network; (4) that the effective date of the rates established in the new interconnection agreement between U S WEST and Western is the date the Commission approves the agreement executed by the parties, including the arbitrated terms and conditions and the negotiated terms and conditions; (5) that Western is entitled to reciprocal compensation at the existing contract rate from March 29, 1996, the date it requested renegotiation of its existing contract, until the date the new agreement takes effect; (6) that a 17 percent administrative factor is reasonable for the amount of traffic terminating on Western's network and shall be used for six months; (7) that the parties shall conduct a study using mutually agreeable parameters to determine a more supportable administrative factor to estimate the amount of traffic terminating on Western's network for use after the first six months of the new contract period and shall revise the administrative factor annually until SS7 functions are fully implemented; (8) that the local calling area is the Major Trading Area (MTA) established by the FCC for CMRS providers, and in this case is the State of Montana; (9) that a 5 percent administrative factor, or "toll factor," is reasonable and shall apply to Western's traffic for use as a surrogate for the percentage of actual Western to U S WEST calls that are subject to access charges; and (10) that U S WEST

and Western shall either perform a study to determine the appropriate “toll factor” for access charges or develop the technical means by which Western provides the necessary information regarding the originating location of all calls handed off to U S WEST by Western.

6. The Commission issued a Notice of Application and Opportunity to Comment on this filing on January 17, 1997, requiring that comments be received by January 30, 1997, and oral argument requested by January 22, 1997. The Commission received no requests for oral argument. U S WEST filed the sole response to the notice, restating its position on the effective date for reciprocal compensation. That position was addressed in ¶¶ 26-31 of the Arbitration Order in this Docket and any reargument of that position was more properly the subject of a motion for reconsideration and will not be addressed now that the time for filing such a motion has passed.

#### **Applicable Law and Commission Decision**

7. Section 252(e) of the 1996 Act requires any interconnection agreement adopted by negotiation or arbitration to be submitted to the appropriate state commission for approval. The Commission must approve or reject the agreement, with written findings as to any deficiencies. 47 U.S.C. § 252(e)(1). Section 252(e)(2)(B) prescribes the grounds for rejection of an agreement reached by arbitration:

(2) GROUNDS FOR REJECTION.--The State commission may only reject--

....

(B) an agreement (or any portion thereof) adopted by arbitration under [47 U.S.C. § 252(b)] if it finds that the agreement does not meet the requirements of section 251, including the regulations prescribed by the [Federal Communications] Commission pursuant to section 251, or the standards set forth in [47 U.S.C. § 252(d)].

8. The applicable requirements of § 251 of the 1996 Act and FCC regulations require all local exchange carriers to establish reciprocal compensation arrangements for the transport and termination of telecommunications. Although some of the FCC’s regulations have been stayed by the U.S. Court of Appeals for the Eighth Circuit, the regulations upon which this Commission based its arbitration decision and to which this arbitrated agreement must conform

are found at 47 C.F.R. §§ 51.701, 51.703, 51.711, and 51.717 and are not presently subject to that order.<sup>3</sup> The § 252(d) standard for charges for transport and termination of traffic in relation to § 251(b)(5) provides that a state commission shall not consider terms and conditions for reciprocal compensation to be just and reasonable unless they:

- (i) . . . provide for mutual and reciprocal recovery of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier; and
- (ii) . . . determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls.

In addition, arrangements that afford the mutual recovery of costs through the offsetting of reciprocal obligations, including bill-and-keep arrangements, are not precluded. 47 U.S.C. § 252(d)(2)(B).

9. The rates initially agreed to by the parties and adopted in the Arbitration Order after first determining that U S WEST may not increase its price by adding an amount for its alleged depreciation reserve deficiency meet these standards. The interconnection agreement reflects the arbitrated prices (Section IV. and Appendix A) and their effective date (Section XXII.B.1), satisfying the requirements listed as (1), (2), and (4) in ¶ 5. above. Number (3) from ¶ 5., the provision which requires Western's MTSOs to be treated as end-offices for pricing

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<sup>3</sup> See Order Granting Stay, slip op. (8th Cir.) (Oct. 15, 1996), *affecting the FCC's pricing and "pick and choose" rules and not the entire Order in Iowa Utilities Board, et al. v. FCC*, No. 96-3321 (and consolidated cases), appealing Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, FCC 96-325 (released Aug. 8, 1996), and see Order Lifting Stay In Part, (8th Cir.) (Nov. 1, 1996), *modifying the stay entered on Oct. 15, 1996, and affecting CMRS and LEC interconnection*.

purposes, is included in Section IV.D.1.c. Number (5) addressing reciprocal compensation prior to the effective date of the renegotiated agreement is reflected in the attached Amendment to that contract (see ¶ 10. below). The administrative factors, numbers (6) and (9) in ¶ 5. are reflected in Sections IV.I.2.a and IV.O.3. Number (8), the local calling area determination, is included as a definition in Section III.Y. Number (10) is included in Section IV.O.3. The remaining part of the order, number (7) in ¶ 5. above, is not required as a contract term.

10. The parties' renegotiated arbitrated agreement should be approved. However, the attached Amendment requires some correction and clarification in order to reflect the Commission's Arbitration Order. First, the first line of the first paragraph on Page 1 should be corrected to strike "November 1, 1996" and thus clarify the effective date as March 29, 1996. Further, the November 1, 1996 date included in the "Background" paragraph on Page 1 reflects U S WEST's interpretation as to the effective date for reciprocal symmetrical compensation under the 1996 Act and FCC Order No. 96-325, In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 and Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, adopted on August 1, 1996. This interpretation does not affect the effective date of the Amendment and no correction is necessary. Second, the U S WEST letter dated and filed on January 13, 1997 with revised Page 2 to the Amendment, intended to correct a date in paragraph "e" on Page 2, is signed by U S WEST's counsel, but does not reflect Western's agreement to that correction. This too should be corrected.

### **Conclusions of Law**

1. The Commission has authority to supervise, regulate and control public utilities. Section 69-3-102, MCA. U S WEST is a public utility offering regulated telecommunications services in the State of Montana. Section 69-3-101, MCA.

2. The Commission has authority to do all things necessary and convenient in the exercise of the powers granted to it by the Montana Legislature and to regulate the mode and manner of all investigations and hearings of public utilities and other parties before it. Section 69-3-103, MCA.

3. Western Wireless Corporation, d/b/a “Cellular One,” provides cellular communications in Montana. Cellular communications are not regulated by the Commission. Section 69-3-804, MCA.

4. The United States Congress enacted the Telecommunications Act of 1996 to encourage competition in the telecommunications industry. Congress gave responsibility for much of the implementation of the 1996 Act to the states, to be handled by the state agency with regulatory control over telecommunications carriers. *See generally*, the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (amending scattered sections of the Communications Act of 1934, 47 U.S.C. §§ 151, *et seq.*). The Montana Public Service Commission is the state agency charged with regulating telecommunications carriers in Montana and properly exercises jurisdiction in this Docket pursuant to Title 69, Chapter 3, MCA.

5. Adequate public notice and an opportunity to be heard has been provided to all interested parties in this Docket, as required by the Montana Administrative Procedure Act, Title 2, Chapter 4, MCA.

6. The 1996 Act allows renegotiation of existing interconnection contracts between CMRS providers and incumbent LECs to provide for reciprocal compensation. 47 U.S.C. § 251(b)(5). The Commission properly exercised its jurisdiction in arbitrating open issues in the renegotiation of the interconnection contract between Western and U S WEST, according to the parameters included in 47 U.S.C. § 252(b)(1).

7. The Commission has jurisdiction to approve the Montana Wireless Interconnection Agreement negotiated by the parties and submitted to the Commission for approval according to the terms of the Arbitration Order issued in this Docket on December 27, 1996. Section 69-3-103, MCA.

8. Approval of interconnection agreements by the Commission is subject to the requirements of federal law as set forth in 47 U.S.C. § 252. Section 252(e) limits the Commission’s review of an arbitrated agreement to the standards set forth therein for rejection of such agreements. Section 252(e)(4) requires the Commission to approve or reject the parties’ arbitrated agreement by February 10, 1997, or it will be deemed approved.

**Order**

THEREFORE, based upon the foregoing, it is ORDERED that the Wireless Interconnection Agreement - Montana, submitted to this Commission for approval pursuant to the Telecommunications Act of 1996, is APPROVED subject to the corrections set forth in this Order to be made to the Amendment.

DONE AND DATED this 5th day of February, 1997, by a vote of 5-0.



BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

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DAVE FISHER, Chairman

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NANCY MCCAFFREE, Vice Chair

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BOB ANDERSON, Commissioner

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DANNY OBERG, Commissioner

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BOB ROWE, Commissioner

ATTEST:

Kathlene M. Anderson  
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.